

AMANDA TRIGAL, MANUEL T. PAZ, ET AL., PLAINTIFFS AND APPELLANTS, VS. SABINA TOBIAS, AS ADMINISTRATRIX OF THE TRUSTEESHIP OF AURELIO REYES AND MARIANO V. TAJONERA, DEFENDANTS AND...

G.R. No. 15869. August 31, 1961

Ponente: PAREDES, J.

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PAREDES, J.:

On December 21, 1948, the plaintiffs herein Amanda Trigal and others, heirs of one Fermin Paz, instituted the case at bar before the CFI of Manila, against the defendants Sabina Tobias, as administratrix of the trusteeship of Aurelio Reyes and Mariano V. Tajonera, seeking the annulment of the sale at public auction of two parcels of land, covered by T. C. T. No. 23783, made to Aurelio Reyes for tax delinquency and also the subsequent transfer of said properties to the defendant Mariano V. Tajonera.

Defendants, on March 5, 1949, presented a motion to dismiss the complaint on two grounds, viz: The action is barred by a prior judgment (Order of Judge Pastor M. Endencia, dated Feb. 27, 1943, G.L.R.O. Cad. Record No. 307, Aurelio Reyes, petitioner; Fermin Paz, respondent) and lack of jurisdiction, because the plaintiffs have not complied with the legal provisions in connection with suits contesting the validity of tax sales of real property. Attached to the motion was the above-mentioned Order of Feb. 27, 1943, which reads:

"There being no opposition registered to the sworn petition filed by Atty. Sancho Inocencio in representation of the herein petitioner, and it appearing that the respondent, the registered owner appearing in transfer certificate of Title No. 23783, was duly notified by publication of the hearing thereof as evidenced by the affidavit of publication executed by Mr. Taro Hirano, managing Director of the newspaper THE TALIBA, edited in the City of Manila and of general circulation, filed in the records;

On petition of Dr. Aurelio Reyes, purchaser at public auction of the property described in the transfer certificate of the title in question in order that his right thereto may be properly inscribed in the office of the Register of Deeds of Manila, Transfer Certificate of Title No. 23783, issued in the name of Fermin Paz, is hereby cancelled and declared null and void, and the Register of Deeds of Manila is ordered and directed to issue, after collecting the fees prescribed by law, a new one in lieu thereof in the name of Aurelio Reyes, married to Sabina Tobias, Filipino and residing at 211 Fraternidad, Pandacan, Manila."

On March 12, 1949, defendant Sabina Tobias filed her Answer and after the usual admissions and denials, she stated in substance and elaborated on the same grounds appearing in the Motion to Dismiss. Repeated moves were made by plaintiffs for the setting of the case for hearing (June 20, 1950, January 16, 1952, November 19, 1954 and Sept. 8, 1958). The case could not be heard however, because the record thereof was allegedly lost and/or mislaid.

On September 12, 1958, defendant, thru another counsel, filed a second motion to dismiss the complaint on the ground of res adjudicata, but the lower court on April 15, 1959, entered an Order deferring resolution on the said

Motion until after the trial on the merits, stating that the ground relied upon was not indubitable.

A motion for a reconsideration of the above ruling was presented by defendants on May 5, 1959, stressing upon lack of jurisdiction of the lower court to take cognizance of the case and prescription of action. The motion was opposed by plaintiffs' counsel, claiming that since defendant Sabina Tobias had already filed her Answer, she had waived the right to present any Motion to Dismiss. On May 23, 1959, defendant Tobias presented a Memorandum in support of her Motion for reconsideration and a certificate of the Register of Deeds of Manila, of the following tenor:

At the instance of Atty. Sancho Inocencio, I, Lorenzo C. Gella, Register of Deeds for the City of Manila, do hereby certify that on the back of Transfer Certificate of Title No. 23783, Reg. Book T—54, issued in the names of Fermin Paz married to Amanda Trigal, there appear among other the following annotations, to wit:

By order of the Court (PE, 5170/T66353) issued on Feb. 27, 1943, this title is hereby cancelled and declared null and void, and pursuant to the deed of sale (PE. 5171/T—65353) executed by the City Treasurer on Jan. 16, 1943, it is directed to issue as it is hereby issued, Transfer Certificate of Title No. 65353, Book T—220, in the name of Aurelio Reyes."

After perusal of plaintiffs' manifestation and motion dated May 25, 1959, the court a quo on May 27, 1959 promulgated the following order:

"This is a motion for reconsideration filed by the defendants to set aside the order of this Court dated April 15, 1959 deferring the ruling of the Court on the motion to dismiss filed by said defendants.

From the facts pleaded in the pleadings of the parties it appears clearly that the facts in this case and the questions raised in connection therewith are substantially the same with those of Catalina de la Cruz vs. Marciana Guevara et al., CA—G. R. No. 5798, promulgated on May 13, 1957, 'Valbuena et al. vs. Reyes, et al.' No. 48177, 44 O.G. March 1951, p. 1209, 'Lourdes Paguia vs. Maria Rosado de Ruiz', G.R. No. L—5301, in which the Court of Appeals and the Supreme Court have rendered rulings adverse to the present position of the plaintiffs and from which it is clear the disputed order of February 27, 1943, in G.L.R.O. Rec. No. 307 is res judicata.

Wherefore, the Court sets aside its order of April 15, 1959, and orders the dismissal of plaintiff's complaint, without pronouncement as to costs."

This is an appeal from the above order.

The only error which plaintiffs-appellants have raised in their brief is that the lower court erred in holding that the order of the Registration Court dated Feb. 27, 1943, in G.L.R.O. Cad. Rec. No. 307, is res adjudicata to the present action. On the other hand, defendants-appellees have also alleged as additional grounds for their motion to dismiss the prescription of action and failure of plaintiffs-appellants to comply with the requirements of Sec. 77 of R.A. No. 1837 and, therefore, the lower court had not acquired jurisdiction to entertain the present suit.

We are of the belief that the validity of the sale at public auction had not been put in issue, when the court promulgated the order of February 27, 1943, which cancelled and declared null and void T.C.T. No. 23783 issued in the name of Fermin Paz and directed the Register of Deeds to issue a new one in lieu thereof in the name of Aurelio Reyes. The only mention of the sale at public auction was made when the registration court stated "On petition of Dr. Aurelio Reyes, purchaser at public auction, of the property described in the transfer certificate of title in question, in order that his right thereto may be properly inscribed * * * ". It is true that a sale at public auction is presumed valid and legal unless the contrary is proven. Considering, however, the allegation in the present complaint "That the sale at public auction of the said properties by the Chief of the Department of Finance and The City Treasurer of the Government of the City of Manila, was made and effected without notice to the

deceased Fermin Paz or to any of his heirs, without due publication in newspapers of general circulation in the City of Manila, without posting the notice of the said sales at the City Hall, and in all respects, without complying with the formalities required by law in the premises"; that these requirements of the law should be strictly complied with; that their compliance would give validity and legality to the sale at public auction which was the basis for the issuance of the new transfer certificate of title; that if the orders of February 27, 1943, had been entered without jurisdiction because the sale a public auction was null and void, the same cannot be invoked as basis for the plea of *res adjudicata*; and that plaintiffs-appellants are ready to prove that the legal requirements relative to advertisement and posting of notice were not observed in the public auction sale of the properties in question, we believe that *res adjudicata* does not appear to be indubitable (section 3, Rule 8).

As additional grounds for the motion to dismiss, defendants-appellees alleged prescription of action and non-compliance with Section 77 of Republic Act No. 1837. The present action is one for the annulment of a tax sale, the plaintiffs-appellants asserting that in said sale the statutory requirements relative to advertisement and posting of notice were not observed. The averments in the complaint, if true, rendered the tax sale void ab initio. It is a familiar rule that action to set aside a contract which is void ab initio, does not prescribe (Art. 1410 N.C.C.; Eugenio, et al., vs. Perdido, et al., 97 Phil., 41; Corpuz, et al., vs. Beltran, et al., 97 Phil., 772; 51 Off. Gaz., 5631).

According to said Section 77, no court shall entertain any suit assailing the validity of a tax sale of real estate until the taxpayer shall have paid into the court the amount for which the real estate was sold, together with the interest at the rate of 15 per cent per annum, from the date of sale to the institution of the suit. Defendants-appellees contend that the lower court had no jurisdiction to entertain the present case, as there was no allegation in the complaint that plaintiff-appellants had complied with said requirements or that receipt was produced showing payment of such amounts. The Court having entertained the complaint, the presumption is that the requirements of the law had been fulfilled. The failure to allege compliance in the complaint or to attach there with a receipt showing payment, does not perforce indicate that no such payments were made. It is incumbent upon the defendants-appellees to prove their assertion, giving the plaintiffs-appellants the opportunity to show otherwise. In order, therefore, to remove the dubious character of this ground, the lower court should require the adduction of proofs by the parties.

In view hereof, the lower court should be, as it is hereby ordered, to defer its ruling on the motion to dismiss, until after the hearing on the merits. The order of May 27, 1959, dismissing the plaintiffs-appellants' complaint is set aside and the case is remanded to the court of origin, for further proceedings. No costs.

Bengzon, C. J., Padilla, Concepcion, Reyes, J. B. L., Dizon, De Leon, and Natividad, JJ., concur.

Barrera, J., in the result.

Bautista Angelo, J., took no part.

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